

# HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS. A NEXUS WITH SUSTAINABLE DEVELOPMENT IN CAMEROON

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## ABSTRACT

Globalization has united the world and enhanced the interaction between states, defined all economic, political, social and cultural differences. Today the corporate form is an omnipresent part of modern commercial life and is significant in the economic lives of states. The multinational corporation (or international or transnational corporation) is a business organization whose activities are located in more than two countries and is the organizational form that defines foreign direct investment. This form consists of a country location where the firm is incorporated and of the establishment of branches or subsidiaries in foreign countries. Multinational companies can, obviously, vary in the extent of their multinational activities in terms of the number of countries in which they operate. A large multinational corporation can operate in 100 countries, with hundreds of thousands of employees located outside its home country. When these companies expand, they mostly go for business purposes and forget the notion of protecting human rights which are fundamental for the growth and protection of the population especially in third world countries like Cameroon. It is left on home governments to ensure that these TNCs respect human rights through corporate social responsibility in the process of making profits which can be considered as the main goal of such corporations. There are three main categories of human rights provided in the Universal Declaration on Human Rights which these TNCs and other stakeholders must uphold or guarantee while carrying out their activities namely; first, second and third generation rights. This classification follows the historical development of human rights. The first generation consists of civil and political rights, the second generation rights consist of economic, social and cultural rights, and third category of human rights is closely associated to the rise of third world nationalism also known

as solidarity rights. However, developing states like Cameroon find it difficult to regulate these corporations due to corruption, and the fear of political interference from TNCs since most of them are bigger in influence and finance than Cameroon. The respect of Human rights by TNCs will help increase productivity, hard-work and sustainable development because the respect of these rights encourages people to work in comfortable situations, take care of their families with proper pay, send kids to school, and gain access to modern facilities provided by these TNCs like schools, hospitals and good roads. It is however suggested that foreign developed countries and International organizations, should take charge of sanctioning TNCs which violate human rights in developing countries like Cameroon because they are in a better position to do so due to their economic and political power.

**Keywords:** Globalization, Transnational- Corporations, Human Rights, Sustainable Development.

## INTRODUCTION

The closest historical analogies of the modern multinational corporations are the colonial state monopoly enterprise of the 17th and 19 centuries. These were distinct organizational structures with "headquarters" in the metropolitan states to which the surpluses were dispatched<sup>i</sup>. These TNCs were semi-governmental operations and were agents of state imperialisms, they had other public purposes, and they became the major source of public finance by which the monarch could raise revenue without Parliament and at the same time further foreign policy on a self-funding basis<sup>ii</sup>. The most famous and typical was the British East India Corporation which operated under different names for nearly 300 years<sup>iii</sup>.

There is no single agreed-upon definition of the multinational or transnational corporations. This is hardly surprising in view of the fact that "multinational concept" has many dimensions and may be viewed from any of several different perspectives - economic, political, legal, managerial, and others. Franklin Root<sup>iv</sup> defines TNCs from the ownership criterion as the key. In his view an enterprise becomes multinational only when the headquarters or parent company is effectively owned by nationals of at least two countries. Shell and Unilever, which are controlled by British and Dutch interests, are commonly cited as examples. By this ownership test, very few international companies may be called multinational. The dominant ownership

interest in the overwhelming majority of big international companies is uni-national, namely, American, British, French, or Japanese. The ownership criterion has been rejected by most authorities<sup>v</sup>. On the contrary, the definition is perceived from the criterion of the nationality mix of headquarters management<sup>vi</sup>. In addition, TNCs can be seen as a parent company that controls a large cluster of corporations of various nationalities<sup>vii</sup>. Finding the essence of the multinational enterprise in its attempt "to treat the various national markets as though they were one," Behrman<sup>viii</sup> emphasizes the presence of a single management (strategy) center which guides the actions of foreign affiliates. However, Perlmutter<sup>ix</sup> distinguished three kinds of international companies by reference to the attitudes held by their top executives. Ethnocentric companies follow policies that are home country-oriented, polycentric companies follow policies that are host country-oriented, and geocentric companies follow policies that are world-oriented<sup>x</sup>. To Perlmutter, "a firm's multinationality may be judged by "the pervasiveness with which its executives think geocentrically." More recently, the United Nations defined the essence of multinationalisation (which it calls transnationalization) as the internalization of international market transactions within an individual decision-making unit, the transnational corporation<sup>xi</sup>. For us not to get confused we will use the term TNC to describe a company with operations in more than one country and no differentiation will be made between this term and others such as transnational enterprise or multinational enterprise. Other authors can be verified to understand the difference<sup>xii</sup>.

Corporation form of business came into existence also with the time demand shifting from traditional goods to the capital goods and technological product which required huge amount of labor and capital, supply of which was not possible for a handful of persons either to manage it or to finance its operation and this gave a weapon in the form of corporations that are required to centralize the operations, as someone must be held responsible for the act done<sup>xiii</sup>.

They have more influence, power and decision in every human sphere and this was foreseen also by President Abraham Lincoln when he expressed his fears about corporations, "*I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. Corporations have been enthroned and an era of corruption in high places will follow and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed*". This fear above is the reason why we need to examine the link between TNCs activities and the respect of human rights which leads to sustainable development because when

they become so powerful, they can act with impunity, ignore human rights, thus affecting sustainable development.

Some of the attributes of corporations can be traced back to mediaeval time but modern Cameroon Corporation law really began with development in England in 1825, an adoption dependent on colonial history<sup>xiv</sup>. While many of the substantive rights and duties of shareholders, directors and creditors were worked out of the courts. The historical development or the defining features of corporation law is highly or largely a product of statutory reforms and commercial reaction to this reforms<sup>xv</sup>. Cameroon is a bi-jural nation with the common law system introduced by the English. The civil law was introduced by the French Multinational Corporations as defined by International Labor organization is one which has its operational headquarters based in one country with several other operating branches in different countries. The advent of Multinational Corporation in Africa was triggered by the industrial revolution in Europe. In 1870, were European nations rushed to Africa to secure colonies which served as a for the exploitation of raw materials such as timber, cotton, cocoa, and minerals like diamond which was found in South Africa, gold in Congo and oil in Sierra Leone<sup>xvi</sup>.

During the process of Decolonization the European colonial charter companies were disbanded with the final colonial corporation, the Mozambique Company, dissolving in 1972<sup>xvii</sup>. Several decades after the Second World War and the eventual independence of the African states, colonial powers still continue to apply past and existing international economic arrangements with their former colonies through multinational corporations which continue to exploit raw materials, thus causing the depletion of the natural resources leaving Africa at a high risk of environmental hazards, violation of human rights and taking all benefits abroad leaving African in general and Cameroon in particular, in poverty and underdevelopment. This economic exploitation is carried out by countries such as Britain, America, and France. Analysis has shown that the consequences of these violations will impact on the poor and developing countries (such as Cameroon)<sup>xviii</sup>, first before spreading to the rest of the world. The purpose of this article is to study on how dangerous industrial activities can affect the respect of human rights and sustainable development and to examine corporate social responsibility, international, regional and national legal instruments that can be used to remedy the situation.

## UNDERSTANDING THE CONCEPT OF HUMAN RIGHTS

Human Rights can be defined as those things that belong to a person. Sometimes in order for one to obtain higher rights, some positive action is required from another person. Therefore, rights are given. "Human rights are usually referred to by various names and phrases. These include "fundamental rights", "basic rights", and "natural rights". Although these names may seem to mean the same thing, they are rather confusing<sup>xxix</sup>. It could, however, be said that "fundamental' or basic' rights are those rights which must not be taken away by any legislation or act of the state and which are often set out in the fundamental law of the country, for example in the bill of rights in a constitution. 'Natural' or 'common' rights, on the other hand, are seen as belonging to all men and women by virtue of their human nature<sup>xx</sup>.

Until the 1940s, when Eleanor Roosevelt<sup>xxi</sup> promoted the use of the expression "human rights" after discovering through her work in the United Nations, that the rights of men were not understood in some parts of the world to include the rights of women<sup>xxii</sup>. The term "rights of man" had in fact replaced the original term "natural rights", which had arisen as a result of its connections with natural law<sup>xxiii</sup>. Clearly, then, human rights are those rights one possesses by virtue of 'being human. One need not possess any other qualification to enjoy human rights other than the fact that he or she is a human being. It can therefore be inferred that human rights should be enjoyed by all people, regardless of their social status or their geographical or regional location<sup>xxiv</sup>.

## THE DIFFERENT CATEGORIES OF HUMAN RIGHTS

There have been different classifications of human rights over the years<sup>xxv</sup>(some classifications go as far as categorizing human rights in terms of those which are procedural and those that are substantive. The European Community's human rights handbook classifies human rights into two categories namely: classic rights and social rights. Classic rights include civil and political rights, which generally restrict the power of the state in respect of actions affecting the individual. By contrast, social rights include cultural and economic rights, which require the state to act in a positive, interventionist manner so as to create the necessary conditions for human development and sustainable development). However, classification that is more generally accepted, however, is that in terms of which human rights fall into three categories,

namely; first, second and third generation rights. This classification follows the historical development of human rights.

The first generation consists of civil and political rights. These are the traditional rights of the individual as against the state and they reflect the laissez-faire doctrine of non-interference<sup>xxvi</sup>. These rights are aimed at the protection of the citizen against arbitrary actions of the state and they include: The right to life, Freedom of torture and inhumane treatment, Right to liberty and security of a person, Right to nationality, Freedom of movement, Right to fair hearing, Freedom of thought and conscience, Freedom of opinion and expression, Right to marriage and family, Right to participate on government activities

The above mentioned rights are more concerned or focused on individual rights within a society against government intrusion<sup>xxvii</sup>, and these rights are protected by the International Convention of Civil and Political Rights 1966<sup>xxviii</sup>.

In addition, there is the second generation rights which consist of economic, social and cultural rights. This category is, relatively, a later growth and contains rights founded on the status of an individual as a member of the society<sup>xxix</sup>. Contrary to the first generation rights, social, economic and cultural rights require more positive action on the part of the state to provide or at least create conditions for access to those facilities, which are considered essential for modern life. These rights are associated with the rise of Socialism and particularly the victory of the Bolshevik Revolution in Russia 1917. Examples of this category of rights are<sup>xxx</sup>; The right to work, The right to just working condition, The right to fair remuneration, The right to an adequate standard of living, The right to social security, The right to education, The right to property, The right to good health, The right to participate in cultural life.

These rights are protected by the International Covenant on Economic and Socio-cultural Rights 1966. This is because the right includes basic necessities which should be provided by the state to its citizens<sup>xxxi</sup>. Hence these rights are considering collective rights of people in a community<sup>xxxii</sup>.

Furthermore, there is a third category of human rights. The emergence of this category of rights is closely associated to the rise of third world nationalism. Also known as solidarity rights, these rights are collective in nature and they depend upon international co-operation for their achievement. This right evolved in 1986 where by the General Assembly of the UN adopted

the declaration on the right to development<sup>xxxiii</sup>. The different rights included in this category are; The right to peace, The right to development and, the right to a clean environment<sup>xxxiv</sup>.

The above classification into the first, second and third generation rights form the traditional classification of human rights as explained in the above paragraphs. The goal of identifying these categories, is to enable the transnational corporations understand the different human rights so they will not violate them when carrying out their activities because the drive towards sustainable development has a link or connection with the respect of human rights.

## **THE PRINCIPLES OF HUMAN RIGHTS**

In the above section, we have seen the different categories of human rights. However, these categories have principles which must be respected by individuals and the state including corporations like Transnational Corporations. The different human rights principles include;

The first principle is the principle of Equality. Equality is the focal point and bee rock core aim of human rights and freedom. It focuses on the fact that people should be treated the same, regardless of sex, color and societal status<sup>xxxv</sup>. There are quite a number of Principles of human rights but the importance of these principles is what should be born in the mind of all States, individuals and institutions (including transnational corporations) in their day to day dealings with persons<sup>xxxvi</sup>.

There are other principles which include; the principles of Universality, Indivisibility and Independence<sup>xxxvii</sup>.

Firstly, the principle of universality of human rights is founded on the notion that all human rights apply uniformly and with equal force throughout the world<sup>xxxviii</sup>. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of article I of the Universal Declaration of Human Rights: "all human beings are born free and equal in dignity and rights<sup>xxxix</sup>.

Secondly, human rights are indivisible, whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. And the principle of the indivisibility of human rights is founded on the assumption that all human

rights have the same basic characteristics and should be upheld through the medium of equally potent enforcement mechanisms<sup>xl</sup>.

Thirdly, human rights should be interdependence and Interrelatedness: The principle of interdependence of all human rights holds for the full possession of all the other rights<sup>xli</sup>. Human rights are interdependent and interrelated. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others. For instance, fulfillment of the right to health may depend, in certain circumstances, on fulfillment of the right to development, to education or to information<sup>xlii</sup>.

Fourthly, there is the principle of participation and inclusion. All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups<sup>xliii</sup>.

The above mentioned principles of human rights can be considered as guidelines which the international community and Cameroon in particular, including all individuals and corporation use in the measures taken to respect human rights by transnational corporation so as to guarantee sustainable development.

## **THE RESPONSIBILITY OF CAMEROON TOWARDS THESE PRINCIPLES**

Human rights that are, economic, civil, social, political and cultural impose negative as well as positive obligations on states, as is captured in the distinction between the duties to respect, protect and fulfill. They are considered to be the three levels of obligation<sup>xliv</sup>:

- **The Duty to Respect Human Rights**

This duty imposes an obligation on states not to infringe on the human rights of a citizen. This obligation means refraining from interfering with the enjoyment of the right<sup>xlv</sup>. The Committee on Economic, Social and Cultural Rights stresses such an obligation that state parties have to

respect the enjoyment of the right to health in other states party to the treaty and to prevent 3 parties from violating this right in other countries, if they are able to influence these 3 parties through a legal or political means in accordance with the Charter of the UN and International law<sup>xlvi</sup>.

- **Duty to Protect Human Rights**

States have an obligation to take all possible measures in ensuring that no one infringes on the rights of another<sup>xlvii</sup>. These measures may be legal or administrative measures. Legal measures mean instituting laws punishing human rights violation, while administrative measures in the other hand means setting up institutions which enforces the law in protecting people's rights from being violated<sup>xlviii</sup>. Generally, to protect the right means enacting laws that create mechanisms to prevent violation of the right by state authorities or by non-state actors (including transnational corporations). This protection is to be granted equally to all.

- **The Duty to Fulfill Human Rights**

To fulfill the right, means to take active steps to put in place institutions and procedures, including the allocation of resources to enable people to enjoy the right<sup>xlix</sup>. This obligation requires states to take positive measure toward the realization of the enjoyment of human rights by the citizens. This measure may be administrative, financial, legislative, security measure etc.

All the above information concerning human rights is for TNCs to know how to act while carrying out their activities so as to help in sustainable development.

## **THE CONNECTION BETWEEN HUMAN RIGHTS, TNCs, AND SUSTAINABLE DEVELOPMENT**

In the context of globalization, Africa and Cameroon in particular, require investment by Trans-national corporations (TNCs) to improve its competitiveness and to facilitate micro-level structural changes required for alleviating poverty and reducing its investment risks. Economic theory recognizes that TNCs can contribute to economic growth in developing countries through generating positive externalities<sup>1</sup>. However, the extent to which Africa benefits from spill-over effects of TNCs remains to be empirically investigated. While some multinational

corporations that operate in Africa take the corporate social responsibility (CSR) or voluntary codes of conduct policies seriously, on the other hand, there have been several complaints in many African countries on how these multinational corporations conduct business within the continent<sup>li</sup>

The arrival of globalization as a world economic and human phenomenon, we hope, brings more benefits than disadvantages<sup>lii</sup>. However, reality tells us that globalization produces serious adverse consequences from time to time, particularly in the developing world. Globalization, if it is to come with global profits, must also come with global justice<sup>liii</sup>. We cannot have a rule of law for one group of people and none for the others. Globalization connects people from all over the world, specifically, through advance in technology and transportation. Removal of trade barriers encourages MNCs to start new branches in developing nations. Although MNCs have become more powerful in the world, there has always been an uncertainty about them<sup>liv</sup>, in both positive and negative ways. Some people think that globalization plays a major role in the progress of developing nations<sup>lv</sup> because of the presence of these corporations. Definitely, they are not the basis for the progress of host countries.

TNCs presence has more serious negative impacts on developing countries labor rights, human health and economy. People's common concept is that multinational corporations' existence in developing countries provides employments to the populace<sup>lvi</sup>. In this globalized world, the integration of these corporations allows people to earn money, without relying on others<sup>lvii</sup>. However, people, forget to consider labor exploitation, where laborers receive low wages, work in hazardous environment without protection, and are deprived of labor rights. For instance, women perform two-thirds of all work, if it includes unpaid labor, but they receive only ten percent of the total wages paid worldwide. People consider globalization as a tool for the development of women. If globalization provides a better environment, why are women still getting low wages and are treated as slaves?. These global corporations are profit minded and they search for cheap human power, exploiting laborers rights in developing countries, especially of women by giving them fewer wages and by misusing their rights. Thus, the presence of MNCs is promoting the existence of a callous environment for employees in third world nations.

More so, it is said that the existence of MNCs mitigates poverty in developing nations. Most of the countries are involved in free trade, and they exchange commodities with each other. As

the trade barriers are reduced, the rich nations dump cheap products into poor countries and the MNCs act as catalysts for this process<sup>lviii</sup>. Conversely, the process of globalization has exploited manufactures in developing countries, and has caused massive disruptions in living conditions<sup>lix</sup>. As MNCs have emerged in host countries, local producers have to compete with these large corporations adversely affecting the local economy. However, these corporations also use the resources of these host countries such as natural resources, infrastructure and human power<sup>lx</sup>. For example, some corporations are making furniture by destroying forests in host countries, which devastates the natural environment and affects the local furniture producers as well<sup>lxi</sup>. In conclusion, globalization challenges the progress of host nations by adversely affecting the life of labors, the nations' health and economy. MNCs existence in third world nations has many drawbacks, which are often disregarded by people. As rich nations utilize host countries resources, the present form of globalization must be changed and host countries must free themselves from the grasp of MNCs for real growth<sup>lxii</sup>.

From the above, we have seen that TNCs can greatly affect development. However, there is the need to regulate their activities so they do not negatively affect the human rights of the states which they are present and thus affecting sustainable development. As we have seen from the previous explanations, human rights are rights which belong to every human, while sustainable development is development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The connection between TNCs and this term lies in the fact that, TNCs while carrying out their activities must respect human rights of citizens and workers, and the protect the environment. When these rights are respected, humans can work comfortably, live healthily, produce more and help in continuity and sustainable development. More so, sustainable development goals as we have seen in the general introduction include; no poverty, zero hunger, good health and well-being, quality education, gender equality, clean water and sanitation, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace, justice and strong institutions. These goals can be considered as part of human rights so TNCs should respect these provisions while carrying out their activities through their corporate social responsibilities because by respecting human rights and effectively taking the corporate social responsibility, sustainable development will be visible<sup>lxiii</sup>. These corporate social responsibilities will be explained below.

## **OBLIGATIONS OF TNCs**

Trans-nationals are supposed to respect human rights<sup>lxiv</sup> because by respecting these rights, people will be able to work towards sustainable development. More so, the sustainable development goals involve some human rights so it is necessarily for TNCs to have social responsibilities towards the attainment of these objectives. In summary, these obligations of TNCs can be classified as follows;

### ***Obligation to Equal Opportunity and Non-discriminatory Treatment***

Equal opportunities and non-discrimination are both human rights and sustainable development goals as we have earlier seen. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment<sup>lxv</sup>, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, color, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups<sup>lxvi</sup>. By this, all these TNCs in Cameroon which include MTN, TOTAL, and GLENCORE, just to name a few, has the obligations to respect these rights.

### ***Respect for National Sovereignty***

Sovereignty is a human right and only when a state is sovereign before it can work for the best interest of its citizens towards sustainable development. Multinational corporations and enterprises are under the obligation to recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate<sup>lxvii</sup>. Furthermore, Transnational Corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or Security forces, or any other individual or organization. TNCs

and other business enterprises shall refrain from any activity which Supports, solicits, or encourages states or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights. International corporations and other business enterprises shall respect economic, social and Cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights<sup>lxviii</sup>.

### ***Healthy Environment***

TNCs have the obligation to protect the environment while carrying out their activities. Living in a healthy environment is a human right and sustainable use of the environment is a sustainable development goal. A healthy environment is not only key to the achievement of human rights such as the most fundamental of all, the right to life, but also increasingly recognized as a human right in itself. This healthy environment, in fact the entire earth ecosystem, is threatened by the increasing depletion of resources, biodiversity loss and climate change. Dangerous industrial activity is responsible for a large proportion of this - but the corporations and individuals causing wide-spread damage and destruction often remain unpunished<sup>lxix</sup>. The 1972 Stockholm Conference set up the first rights-based approach to the environment, according to its Principle 1, "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" With this it sets the pace providing that everyone has a right to a healthy environment. TNCs therefore must ensure the protection of this environment when carrying out their activities.

### ***Protection of Workers and Adequate Working Condition***

TNCs have the responsibility not to use forced or compulsory labor as forbidden by the relevant international instruments a national legislation as well as international human rights and humanitarian law. This is to ensure that they do not result to slavery and slave trade<sup>lxx</sup>. In addition, transnational corporations are obliged to respect the rights of children to be protected from economic exploitation as forbidden by the relevant national legislation as well as international human rights and international instruments and national legislation as well as

international humanitarian law, so as to prevent child labor and protect children's rights<sup>lxxi</sup>. More so, multinational corporations and other enterprises have the responsibility to provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law. Also, international corporations and other businesses shall provide workers with the remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement<sup>lxxii</sup>. Transnational corporations and business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labor Organization<sup>lxxiii</sup>.

### ***Security of Persons***

TNCs shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance<sup>lxxiv</sup>, forced or compulsory labor, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law<sup>lxxv</sup>, in particular human rights and humanitarian law. In Cameroon this is regulated by, Article 89(1X2) of the 2001 amended in 2010 mining code, that people affected by mining operations are entitled to compensation the amount which shall be decided from the ad valorem tax. More so, Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate<sup>lxxvi</sup>

### ***Obligation towards the Indigenous People***

Indigenous people have for a long time been fighting for their basic and fundamental human rights which are codified in various international instruments and declarations<sup>lxxvii</sup>, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPRX) the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Covenant on the Elimination of Racial Discrimination and United Nations

Declaration on the Rights of Indigenous Peoples. They all prohibit all discrimination based on distinctions such as color, race, religion, nationality and political opinion. *Winters v. United States* (1908), was a United States Supreme Court case clarifying water rights water relate to the continuing survival and self- sufficiency of American Indian people of American Indian reservations. This was meant to clearly define the water rights of American Indians in cases where the rights were not clear. The case sets the standards for the United States government to acknowledge the vitality of American Indian water rights, and how rights to the water relate to the continuing survival and self-sufficiency of American Indian people.

These rights are different from the specific group right like belonging to a population or a state<sup>lxxviii</sup>. There are three man rights that distinguish indigenous people's rights These are; the land to the traditional land owner and used by the indigenous people since prehistory, the right to self-governance or autonomy and the right to culture', such as traditional life style<sup>lxxix</sup>.

The only mention on indigenous peoples' rights in the Cameroon constitution is in its preamble where it is stated that, the state shall ensure the protection of minorities and shall preserve the rights of indigenous population in accordance with the law<sup>lxxx</sup>. There are no specific group of rights mentioned or explained jus that their rights will be protected by law. Although the Cameroon constitution does not protect the specific rights of the indigenous people, these rights are still protected under international law indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions<sup>lxxxii</sup>, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts<sup>lxxxii</sup>. They also have the right to maintain, control, Protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions<sup>lxxxiii</sup>.

As we have seen from the above obligations by TNCs, respecting human rights is a fundamental duty which these corporations must follow because we cannot talk of sustainable development when people do not enjoy basic human rights. These basic human rights are part of the sustainable development goals. It will therefore be good for us to look into legal instruments which guide TNCs as they carry out their activities so they can respect human rights and help in sustainable development where they operate (in our case, Cameroon).

### ***Problems Faced by Cameroon in Regulating TNCs***

Cameroon always has the duty to ensure that these TNCs comply with relevant rules and principles but Cameroon like every other state usually face some difficulties in regulating the excesses of these TNCs or controlling them so they can respect human rights and the drive towards sustainable development. We will examine some of these problems in this section.

#### ***Corruption***

Corruption is a form of dishonest or criminal offense which is undertaken by a person or an organization (TNCs) which is entrusted in a position of authority, in order to acquire illicit benefits or abuse power for personal gain<sup>lxxxiv</sup>. It erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis<sup>lxxxv</sup>. The corruption perception index in Cameroon by Transparency International ranks Cameroon 144 out of 180 countries<sup>lxxxvi</sup>.

In developing countries (like Cameroon), there are widespread allegations of corruption<sup>lxxxvii</sup> and many contracts (including those with TNCs) are signed with corrupt clauses and not actually for the benefit of the common citizens. For years, many countries provided tax deductions for bribes; in effect, Western governments were subsidizing them, even though they undermined democratic governance abroad and sometimes MNCs engage in corruption (bribery). The most recent case of corruption by TNCs can be seen in the case of Glencore case which has pleaded guilty to multiple counts of bribery after admitting to bribing officials in countries like Cameroon, Equatorial Guinea, Ivory Coast, Nigeria and South Sudan, marking a rare corporate conviction for corruption<sup>lxxxviii</sup>. This situation makes it impossible for such TNC to act properly because they know they have already corrupted some officials and this can affect the respect of human rights principles<sup>lxxxix</sup> and sustainable development.

Furthermore, the benefits from the royalties, taxes and other incentives do not trickle down to the masses that is, nobody is held accountable and according to Transparency International Corruption index 2020, up to 90 percent of the resources stolen from developing countries find their way in banks in the United States<sup>xc</sup>, European and in Switzerland and these are the same people who shout from rooftops that developing countries must fight corruption. We can see how the majority of the loot in Kenya has taken place under the watch of British MNCs ensuring the money buy properties in the United Kingdom and other western countries or end

up in the London Stock Exchange, Wall Street and other international markets or banks in the British Isles, Switzerland and Caymans<sup>xci</sup>. Some home countries have played hosts to some of these fugitives who are wanted for corruption charges. These social ills have eaten deep into our fabrics and the masses are going through too much pain and suffering. For example Lagos is a stone throw away from the largest oil refineries yet blackouts are the order of the day. The Democratic Republic of Congo, Gabon, Equatorial Guinea and Cameroon are rich in minerals with fertile soils, yet the majority of their population considers it a privilege to get food and clean water.

They are always on the international headlines launching food appeals for its starving population and this practice was seen in Zambia with the change in ownership of copper mines in Chinese MNCs that are notorious for poor working conditions and repatriation of profit. And the role played by Talisman in Sudan<sup>xcii</sup>.

### ***Lobbying***

Lobbying, persuasion or interest representation is the act of lawfully attempting to influence the actions, policies, or decisions of government officials, most often legislators or members of regulatory agencies<sup>xciii</sup>. Professional lobbyists are among the most experienced, knowledgeable, and strategic actors one can find in the everyday practice of politics<sup>xciv</sup>. All national governments are susceptible to lobbying by MNCs; so as to influence political decisions, it is a legitimate and necessary part of contemporary society<sup>xcv</sup>. Individuals as well as MNCs want to influence decisions that may affect them, their environment and those around them. As Oliver Stone explained, Wall Street, you know, you could say... runs the world. Wall Street, the pharmaceutical lobbies, the oil lobbies, they run our government<sup>xcvi</sup>.

They lobby politicians, governments directly or by using private lobbying corporations. For these to be successful, access by MNCs to governments' ministries and politicians are all important. In order words the lobbying power of these corporations and the evasiveness with which they are exercised gives suspicion. The sheer size of lobbying industry and the commercial might of MNCs, operating in the global market, suggest that they are only concerned only with their interests and the interests of their shareholders<sup>xcvii</sup>. When this happens, these TNCs ignore human rights policies or the developmental agendas of host countries because they focus just on their profits and most times, these less developed countries like Cameroon don't have experts to understand such deals they just accept.

In addition, TNCs and the governments of developed countries who represent their interests, take advantage not only of asymmetries of power, but also of information<sup>xcviii</sup>. The United States has bargained with dozens of countries (including Cameroon). It is familiar with provisions that may have large effects, either in terms of benefits or costs. The governments have large staffs that can write, review, and analyze such agreements clause by clause. The governments are assisted by well-paid corporate lobbyists and lawyers, who are even more sensitive to the consequences of each provision<sup>xcix</sup>. Because of the size of their economy, their governments have virtually every industry that might be affected by the agreements, and they are, in effect, at the bargaining table. In contrast, developing countries like Cameroon have a small staff at stake they are not simply the industries present during negotiations, but also those that might be established in the future. These industries have neither lobbyists nor lawyers to represent their interests. Even if a developing country realizes that some provision proposed by the governments are unfavorable, or identifies provisions that might actually be unfavorable to their growth.

TNCs not only rub shoulders with governments but can become part of it. Directors<sup>c</sup> of corporations are often seconded to work for civil service. Once installed, they may be involved in government procurement roles or serve on advisory committees and are thus well placed to communicate corporate needs directly to government<sup>ci</sup>. The traffic is two ways, retired politicians and senior civil servants often pursue a second career as advisers and consultants to private industry<sup>cii</sup>.

### ***Human Rights Cover-up by Host and Home Countries***

Human right violations have been the order of the day in that most head of states are part of these corporate CEOs and the reasons why it is difficult to regulate corporate activities and need them accountable for human rights crime. An example of a jurisdictional shortcoming in the United States is the difficulty of piercing the corporate veil. It can be extremely difficult to hold a parent company liable for acts committed by its subsidiary. *Bowoto v. Chevron Corp*<sup>ciii</sup> is an example of the difficulties in suing a multinational corporation for alleged violations of human rights, and perhaps the need for more formal regulation and accountability of multinational corporations.

In addition, this can be seen from the role played by some corporations like Reinmetall Group, for providing armed ammunition to the apartheid government; British Petroleum (BP), Shell,

Chevron Texaco, Exxon Mobil, Fluor Corporation and Total fina-Elf, for providing fuel to the armed forces: Ford, Daimler-Chrysler and general motors, for providing transportation to the armed forces, and Fujitsu and IBM for providing the government with much needed military technology and all of these demonstrate just how dangerous this legal gap is.

All of the victims in these cases and others are still waiting for remedy and fair compensation. Banks that financed apartheid includes Barclays, Citibank, Commerzbank, Credit Suisse, Deutsche, Dresdner, J P Morgan Chase and UBS<sup>civ</sup>. Also what Gasprom is now doing in Eastern Europe and the recent Ebola outbreak in which some pharmaceutical industries are accused with the help of ELE/Total? Despite losing a court case in Ecuador raised by affected indigenous communities, Chevron (which acquired Texaco in 2000) has used an international arbitration system to avoid complying with the judicial sentence in Ecuador. Another example is the BP Deep water Horizon case that involved an oil spill causing dramatic environmental effects to the Gulf of Mexico in 2010. Litigation s still going today and is bound to come to a settlement between the US and the corporations involved. The dispute over who is liable continues between BP, Transocean and Haliburton. All these examples are similar to what Cameroon is facing but these TNCs can't be held liable.

### ***Financial Strength of TNCs***

The financial strength or wealth of MNCs is in fact one of the greatest reasons why States are unable to effectively control them. It has been observed that a good number of multinational corporations are richer than the countries in which they operate especially in developing countries like Cameroon. According to a study carried out in 2021, MNCs dominate the top 100 economic entities of the world. Of the 100 economic entities, 51 are MNCs while 49 are states<sup>cv</sup>. For instance, Apple Inc, which is the richest MNC in the world, is richer than 161 countries<sup>cvi</sup>.

Other MNCS like General Motors, The City of London, Toyota Motors, Mitsubishi, Exxon Mobil, Nike, Nestle, Coca cola, Castle, Samsung. MTN, just to name a few possess enough financial power to influence and control countries in which they operate<sup>cvi</sup>. Sometimes, TNCs exert their influence simply by threatening to leave the country and go elsewhere if environmental or worker safety regulations are enforced or if they are asked to pay their fair share of taxes<sup>cvi</sup>. With such enormous wealth, MNCs have been involved in financing huge projects in countries. They are also involved in producing goods and services that poorer

nations cannot afford to produce if they have to rely on their budgets. Considering that some of these goods are necessities to the States such as electricity, states are left with no choice but to turn to these corporations. The effect is that in such situations, the State may have no choice but to yield to the terms and conditions lay down by these corporations. Thus, the state finds it difficult to control the corporations and impose obligations on them in order to secure the continuation of the activities of these corporations which they deem necessary for the country or the population. They might threaten to leave the country and go elsewhere if their interests are not well protected<sup>cxix</sup>.

### ***Administrative Problems***

Administrative problems are some of the highest problems plaguing developing countries like Cameroon today and have been blamed in most cases for the slow development these countries are facing. In fact, poor administrative capacities and expertise is one of the reasons why it is difficult to regulate MNCs<sup>cx</sup>. This is because TNCs usually make use of experts in every field of their operations. These experts are usually absent in the administrative systems of most developing countries as access to power is usually attained through corruption not on merits<sup>cxii</sup>. MNCs usually exploit this lapse to their advantage to get away with things that they would not be able to get away with, if they were operating in systems that had all necessary administrative and technical expertise.

This is because MNCs usually indulge in fraudulent practices that can only be detected with the use of high technical expertise and administrative efficiency which is largely absent especially in developing countries. Some MNCs are exploiting the lack of administrative capacity as the basis of claims against developing countries under BIT provisions providing for "fair and equitable treatment"-even though they should have been fully aware of these limitations at the time they made the investments<sup>cxiii</sup>. Arbitration panels have found governments liable for not providing "fair and equitable treatment" by virtue of not offering foreign investors an administrative apparatus that is sufficiently transparent, competent, responsive, and efficient<sup>cxiiii</sup>.

### ***Lack of Home based Exploiters***

It is stated in international law that a sovereign state has the exclusive rights to exploit the natural resources found within its territory<sup>cxv</sup>. These investors buy up the common land that

peasants depended on for food survival<sup>cxv</sup>. Plantations for exotic crops for export drain off scarce water with irrigation projects. Mineral extraction leaves behind toxic land, water and air pollution<sup>cxvi</sup>. The clearing of natural habitats of timber and for export agriculture is endangering rare species. Having this right is one thing and having the ability to exploit these resources is a whole different issue. Most developing countries particularly do not have the required technological knowhow to exploit their natural endowments such as crude oil, iron, aluminum, energy potentials, just to name a few<sup>cxvii</sup>.

In most cases, they have relied on the expertise of MNCs who generally don't only have the technology but also the required equipment. This can be seen from during the Reign of King Idriss who invited some of these MNCs. He granted them concession contracts on fifty-fifty basis. The problem arises when these corporations start to exploit these natural resources indiscriminately, and without regards to environmental safety and protection as well ignoring corporate social responsibilities. Considering that these corporations are largely out not only to make profits but to maximize profits, ills like these are inevitable. Even when such awkward practices come to the attention of the government it is difficult for the government to regulate them because the government itself lacks the technology to either take over the activity to investigate the alleged excesses of the MNC involved<sup>cxviii</sup>.

## CONCLUSION

As we have seen from the above obligations by TNCs, respecting human rights is a fundamental duty which these corporations must follow because we can not talk of sustainable development when people do not enjoy basic human rights. These basic human rights are part of the sustainable development goals. It will therefore be good for us to look into legal instruments which guide TNCs as they carry out their activities so they can respect human rights and help in sustainable development where they operate (in our case, Cameroon).

However, despite the numerous international, regional and national instruments put in place to regulate TNCs, there is still much to be done especially at the international scene since these TNCs are too big to be regulated nationally. Just as strong laws regulate and guide human behaviors, strong legal instruments should be put in place to bind TNCs. The respect of human rights is fundamental in our society, so too is the quest for business profits and development,

so we need to strike a balance between profits, the respect of human rights and sustainable development.

Since these TNCs are too big, the state should join other regional countries to form a collective block and create a common standard for the respect of human rights by these TNCs since an individual state like Cameroon can find it difficult to check the activities of these TNCs. The state should equally assist victims of violations carried out by TNCs in filing legal suits in home countries of these TNCs.

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